IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 731 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOLI BHUPATBHAI HAMIRBHAI & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR SA BAQUI for Appellant(s) : 1,MR BHADRESH C PATEL for Appellant(s) : 1 - 2.
MR PD BHATE, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/11/2007

ORAL JUDGMENT

In the present appeal, the appellants-original accused have challenged the judgment and order dated 1st August 1992 passed by the learned Additional

Sessions Judge, Bhavnagar in Sessions Case No.142/89.

2. During the pendency of the appeal, appellant No.2 has expired. Appeal qua appellant No.2, therefore, stands abated.

3. Appellant No.1 was original accused No.1. The case had arisen out of a complaint lodged by one Dhira Kana on 9.7.89 stating, inter alia, that on 8.7.89 at about 8 'O clock night, appellant No.1 and others had assaulted and caused injuries to the complainant and father of the complainant. The incident occurred on account of some minor quarrel between two young boys belonging to the rival groups. It is the case of the defence that in the ensuing quarrel, in fact, one Jeram Hamir received fatal injuries. However, it is not in dispute that the accused persons in the said case have been acquitted. Be that as it may, one is concerned with the recording of conviction and sentence passed by the learned Additional Sessions Judge, Bhavnagar in the present case.

4. The learned Additional Sessions Judge, framed charges at Ex.3 charging the appellants of having committed offence punishable under section 324 read with section 114 of the Indian Penal Code as well as 504 of the Indian Penal Code.

5. Upon conclusion of the trial, the learned Judge was pleased to convict the accused of offence

punishable under section 324 read with section 114 of the Indian Penal Code and sentenced them to undergo rigourous imprisonment for a period of one year and fine of Rs.250/-.

6. The prosecution examined the complainant, eye witness, Dhiru Kana, PW-6 at Ex.21. In his evidence, it has been stated that when Vithal, son of his uncle Panchabhai was playing with son of Jerambhai, they had a quarrel. His uncle Panchabhai, therefore, slapped Dhiru, son of Jerambhai. Thereupon, the boy went to his house and at which time, Bhupatbhai gave a blow on the head of the complainant with an iron pipe. Jerambhai gave a stick blow on the back of the complainant. Arjanbai gave a stick blow to the father of the complainant on his ear. He was shifted to the hospital in a tractor where his complaint was recorded by the police. He identified the iron pipe allegedly used in the offence.

In cross-examination, he agreed that he is one of the accused in the case of murder of Jerambhai. He denied that the incident had not taken place at all and that he had filed the complaint only as a counter-blast to the murder case.

7. Kanabhai Boghabhai, father of the complainant, PW-7, was examined at Ex.23. He also narrated the incident in similar fashion. He stated that Bhupatbhai had given a blow on the head of his

son with an iron pipe. Jerambhai had given a stick blow on his back. He stated that Arjanbhai had given a stick blow near his eyes.

In his cross-examination, he also denied that the complaint was lodged to counter the murder case.

8. Dr.Bhagvanbhai, PW-1, was examined at Ex.8. He was the Medical Officer at Palitana hospital in October 1989. He had given treatment to the complainant and his father. He stated that the complainant had one skull deep injury on left side of the head. Kana Bogha, father of the complainant had an injury on the head in the form of bruise of 3 cm x 3 cm and scratch marks of 1/8 x 1/8 c.m. on the left cheek. He produced the certificate of injuries issued by him. He stated that the patient would recover in about 8 to 10 days.

In his cross-examination, he agreed that the injuries were simple injuries.

9. The prosecution also examined the Investigating Officer who narrated the manner in which the investigation was carried out as also the panch witnesses who had witnessed the recovery of iron pipe as well as the stick. However, it may be noted that the panch witnesses had turned hostile.

10. On the basis of the above evidence, learned

advocate Mr.Baqui for appellant No.1 submitted that the learned Sessions Judge committed error in holding the appellants guilty. He submitted that both the witnesses were interested witnesses. Though the incident had taken place in a crowded locality, no independent witnesses were examined. He submitted that the witnesses had not explained the injuries on the accused and other persons of the group and that therefore, they were not reliable or truthful witnesses. It was further submitted that the injuries were admittedly of simple nature and therefore the sentence was also harsh.

11. On the other hand, learned APP Shri Bhate for the State opposed the appeal and submitted that there was sufficient evidence to record conviction of the appellant and considering the nature of injuries caused, the punishment is justified.

12. Having heard the learned advocates appearing for the parties and having perused the evidence on record, it would appear that two eye-witnesses had given consistent version of the incident in question. The complainant Dhira Kana had narrated the origin of the quarrel and stated that one blow with iron pipe was given by appellant No.1. PW-7, Kana Bogha also gave similar version of the entire incident. In cross-examination of the eye witnesses, no material contradiction has been extracted except suggesting that the complaint was made to be used as counter-blast for the cross case and hardly any other

suggestions were put to the witnesses.

13. Oral evidence of these witnesses stand corroborated by the medical evidence of Dr.Bhagvanbhai, PW-1. He had treated the witness at the relevant time since he was the Medical Officer at Palitana hospital. The nature of injuries noticed by the doctor is corresponding to the injuries caused to the complainant and his father by the accused. The complainant received one head injury which according to the doctor could have been caused by any hard and blunt substance. The fact that incident did occur in the manner in which the witness narrated seems beyond doubt.

14. The conviction of the appellant under section 324 of the Indian Penal Code was therefore justified. It is true that the nature of injury was simple as agreed to by the doctor. However, section 324 of the Indian Penal Code provides for punishment for voluntarily causing hurt besides others, by means of any instruments which, used as weapon of offence, is likely cause death. When iron pipe is used to give a head blow, section 324 stands satisfied. The question, however is regarding the quantum of punishment. As noticed earlier, injuries to the complainant as well as to his father were of simple nature. In fact, appellant No.1 herein is alleged to have caused injury only to the complainant. The complainant suffered only one injury on his head, that too only skin deep. There was no

skull fracture nor was the injury serious. The doctor opined that under ordinary circumstances, the patient would recover fully within eight to ten days. The injury was simple. Thus the iron pipe blow was not given with any ferocity. Many years have passed since the alleged incident took place. Sentencing appellant No.1 for a period of one year of imprisonment as directed by the Court below therefore would be harsh.

15. Under the circumstances, while upholding the conviction of appellant No.1 under section 324 of the Indian Penal Code, sentence of imprisonment is reduced to six months of rigourus imprisonment from that of one year awarded by the learned Sessions Judge. The direction for payment of fine remains unaltered. Bail stands cancelled. With this modification in the impugned judgment, the appeal stands disposed of.

(Akil Kureshi, J.)

(vjn)